SUPREME COURT, U. S.

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No. 1069

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

SHERMAN H. SKOLNICK,

Petitioner,

vs.

CHARLES T. MARTIN; and ARTHUR LILLY; and CHARLES R. PERRIGO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

SHERMAN H. SKOLNICK,
9800 South Oglesby Avenue
Chicago, Illinois 60617
ESsex 5-5741
Petitioner, Pro Se.

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SHERMAN H. SKOLNICK,

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CHARLES T. MARTIN; and ARTHUR LILLY; and CHARLES R. PERRIGO,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

The petitioner, Sherman H. Skolnick, prays that a Writ of Certiorari be issued to review the final judgment of the Supreme Court of Illinois. Petitioner's timely Petition for Rehearing in the Supreme Court of Illinois was denied on January 19, 1965.

OPINION BELOW.

The opinion of the Supreme Court of Illinois is reported in full in 32 Ill. 2d 55, 203 N.E. 2d 428. It is printed herein as Appendix A.

DOCUMENTS AND PAPERS TRANSMITTED WITH PETITION.

1. Certified copy of Abstract of Record, with nine additional copies.
2. Certified copy of petitioner's Brief filed in the Illinois Supreme Court, with nine additional copies.

3. Certified copy of Opinion rendered by the Supreme Court of Illinois.

4. Certified copy of the judgment of the Supreme Court of Illinois, entered on November 24, 1964.

5. Certified copy of petitioner's Motion filed in the Supreme Court of Illinois to expunge the court's written opinion and to withdraw said opinion; and to vacate the court's judgment.

6. Certified copy of Order entered January 14, 1965. denying said Motion.

7. Certified copy of Order entered January 19,1965, denying Petition for Rehearing.

JURISDICTION.

The final judgment of the Supreme Court of Illinois, reversing the Illinois Appellate Court, First District, and affirming the Superior Court of Cook County, was entered on November 24, 1964. (Appendix B, infra,page 17).The petitioner filed a timely petition for rehearing, which was denied on January 19, 1965 (Appendix C, infra, page 19).

The petitioner therefore invokes the jurisdiction of this Court under 28 U.S.C.A. Section 1257(3), since the validity of a state statute on grounds of repugnancy to the Constitution and laws of the United States is drawn in question and since Federal Constitutional rights, privileges, and immunities are involved.

QUESTIONS PRESENTED.

1. Since the Illinois Supreme Court, the final forum in Illinois, has construed Section 48(1)(c)of the Illinois Civil Practice Act as authorizing the dismissal of petitioner's state court suit, at his costs, on the sole basis of the pendency in the Federal Court of another action between the same parties, petitioner's Federal

Court Civil Rights Act suit, is Section 48(1)(c) repugnant to Section One, Fourteenth Amendment of the Federal Constitution as depriving petitioner of Due Process and the Equal Protection of the Laws?

2. Since the Illinois Supreme Court has ruled that Section 48(1)(c) of the Illinois Civil Practice Act authorizes the dismissal of petitioner's state court suit, at his costs, on the sole basis of the pendency of petitioner's Federal Court Civil Rights Act suit, does Section 48(1)(c) abridge petitioner's privileges and immunities in contravention of Section One, Fourteenth Amendment of the Federal Constitution?

3. Since it was the intentions of the framers of the Civil Rights Acts of 1871 [42 U.S.C.A. Sections 1983, 1985(2)(3)], upon which this Court has made authoritative pronouncements, that the federal remedy is supplementary to the state remedy, was petitioner deprived of Due Process and the Equal Protection of the Laws, in violation of the Fourteenth Amendment, by the state court dismissing his suit, at his costs, on the sole basis of the pendency of petitioner's Federal Court Civil Rights Act suit?

4. Was it a violation of the Fourteenth Amendment Due Process, Equal Protection, and privileges and immunities clauses, for the state court to interfere or take away petitioner's right to pursue his federal-court remedy supplementary to his state-court remedy, by the dismissal of his state court suit, at his costs, on the sole basis of the pendency of his Federal Court Civil Rights Act suit?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.

A.) Amendment XIV to the Constitution of the United States, Section 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, libe.ty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

B.) Illinois Civil Practice Act, Chap. 110, Section 48(1)(c), Ill. Rev. Stat. 1961, page 1235 provides:

"48. Involuntary dismissal based upon certain defects or defenses.

"(1) Defendant may, within the time for pleading, file a motion for dismissal of the action or for other appropriate relief upon any of the following grounds. If the grounds do not appear on the face of the pleading attacked the motion shall be supported by affidavit: • • •

"(c) That there is another action pending between the same parties for the same cause."

STATEMENT OF THE CASE.

Petitioner's Complaint with Jury Demand was filed in the Superior Court of Cook County, Illinois, on January 4, 1962, seeking damages against the respondents for malicious trespass and malicious abuse of deposition process. (Abst. 1-6; Rec. 2-7. Also see, Skolnick v. Martin et al., 47 Ill. App. 2d 167, at 168, 197 N. E. 2d 739, at 740).

On the same day, January 4, 1962, was filed petitioner's Federal Court Civil Rights Act suit. (Abst. 7-12; Rec. 19-24. Also see, 47 Ill. App. 2d 167, at 168, 197 N. E. 2d 739, at 740).

Respondents filed a motion to dismiss in the Superior Court asserting as their only ground, Section 48(1)(c) of the Illinois Civil Practice Act. (Abst. 6-7, 15; Rec. 16-18, 35).

Petitioner's Objections and Counter-Affidavit were filed asking that said Motion of Respondents be stricken or denied, and stating that were the provisions of Section 48(1)(c) to be construed to authorize the dismissal of petitioner's state case because of the pendency of petitioner's Federal Court Civil Rights Act suit, that Section 48 (1)(c) would then be unconstitutional as a contravention of Section One, Fourteenth Amendment of the Federal Constitution. (Abst. 12-14; Rec. 29-31).

On March 28, 1962, the Superior Court entered an Order of Court, dismissing petitioner's suit. Said Order states:

"This cause coming on to be heard on motion of the defendants, Arthur Lilly and Charles R. Perrigo by their attorney B.F. Martin, and defendant Charles Martin, to dismiss the above captioned law suit for the reason that there is presently pending in the United States District Court for the Northern District of Illinois, Eastern Division, another action pending between the same parties, with the same alignment of parties, for the same alleged cause. The Court being fully advised in the premises and having jurisdiction of the subject matter and of the parties; It is hereby ordered that the motion of the defendants is hereby sustained and this suit is dismissed at plaintiff's costs. It is further ordered that plaintiff's motion to file an amended complaint is hereby denied."
(Abst. 16; Rec. 44).

The details of petitioner's appeal thereafter are set forth herein in the Reasons for Granting the Writ, at pages 8-10, and are adopted and incorporated herein by reference.

Federal Constitutional questions were alleged, raised, and asserted in the state trial court, the Superior Court of Cook County. (Abst. 12-14; Rec. 29-31). Federal Constitutional questions are inherent in said Order of the Superior Court. (Abst. 16; Rec. 44).

Federal Constitutional questions are alleged, raised, and asserted in petitioner's Brief in the Supreme Court of Illinois. (Petitioner's Brief, pp. 3-19).

REASONS FOR GRANTING THE WRIT.

I.

The petitioner is a layman, representing himself, pro se, and has written and produced this petition himself.

In 1961, this Court in the case of Monroe v. Pape said:

"The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." 365 U.S. 167, 183, 81 S.Ct.473, 482.

The question left open and undecided by the Monroe case is---what happens if the litigant does in fact pursue his federal-court remedy supplementary to his state-court remedy? Can the state court, as in the instant case, apply and enforce a state statute of general scope, to dismiss the state case, at petitioner's costs, on the sole basis of the pendency in the federal court of another action between the same parties ?

The Superior Court of Cook County, on motion of the respondents, applying and enforcing Section 48 (1)(c) of the Illinois Civil Practice Act, did dismiss petitioner's suit, at petitioner's costs, on the sole basis of the other action pending in the Federal Court, petitioner's Federal Court Civil Rights Act suit. (Abst. 16; Rec. 44).

This petitioner took this Court at its word, when it made the clear pronouncement in the Monroe case that the federal remedy is supplementary to the state remedy. (365 U.S. 167, 183). That pronouncement was amplified and adopted in McNeese v. Board of Education, 373 U.S. 668, 671-672, 83 S.Ct. 1433, 1435 (1963).

In other words, a citizen has a right to pursue his federal-court remedy supplementary to his state-court remedy---yes, but not in Illinois.

It should be noted that in a Federal diversity suit, the U.S. District Court is sitting as only another Illinois court. [Mayer v. Petzelt, 7 Cir., 311 F.2d 601, 1962]. But, petitioner's suit in the Federal Court was not a diversity suit, but a Federal Civil Rights Act suit. (Abst. 7-12; Rec. 19-24). In petitioner's Federal suit, the U.S. District Court was not sitting as just another Illinois court.

It is a matter of common knowledge that U.S. District Judges often reject jurisdiction in Federal Court Civil Rights cases, or dismiss such cases on matters unrelated to the merits. It is a rare Civil Rights case indeed that survives in the Federal District Courts or in the U.S. Courts of Appeals. See, 1 Emerson and Haber, "Political and Civil Rights in the United States", [2nd ed., 1958], pages 82-86.

In view of the ruling by the Illinois Supreme Court in petitioner's case, what Illinois plaintiff, or his attorney, would now risk pursuing the Federal Court Civil Rights Act remedy as, in effect, the only remedy? The effect of the decision by the Illinois Supreme Court in the instant case is to bar and nullify, in Illinois, the Federal remedy supplementary to the state remedy. Knowledgeable plaintiffs in Illinois will now pursue, reluctantly, only their state-court remedies.

The ruling by the Illinois Supreme Court will soon enough be adopted by state courts in other states as an important precedent, undermining and nullifying not only the intentions of the framers of the Civil Rights Acts of 1871---but undermining and nullifying as well this Court's authoritative pronouncements in the Monroe case and in the McNeese case.

This Court must always be vigilant of the opening wedge that operates to destroy constitutional rights.

The mischief caused by the Illinois Supreme Court's ruling, if not reversed, will continue to multiply in ever widening circles. Plaintiffs who would previously have filed an in personam case in Illinois and in a sister state, where the circumstances might warrant it, now cannot do so---not in Illinois. In commerce cases where there is some doubt whether the state court or the federal court is the proper tribunal, ---those doubts will now have to be resolved in advance by the toss of a coin.

Petitioner's case is a clear-cut matter and this Court should grant certiorari and rule upon it.

II.

The petitioner challenged the constitutionality of Section 48(1)(c) of the Illinois Civil Practice Act, as construed and applied to petitioner, at every step of his way through the Illinois state courts:

1. Petitioner challenged the constitutionality of Section 48(1)(c) in the state trial court, the Superior Court of Cook County. (Abst. 13-14; Rec. 29-30).

2. On direct appeal to the Illinois Supreme Court in 1962, petitioner challenged the constitutionality of Section 48(1)(c). The Illinois Supreme Court sought to circumvent the issue by transferring petitioner's appeal to the Illinois Appellate Court, without any hearing and without giving any reason. See, Skolnick v. Martin et al., Petition for Certiorari. Oct. Term, 1962, No. 807. Respondents, in opposition to said petition, suggested that the petitioner at that time did not have a final judgment from the highest court of Illinois. Certiorari was denied, 372 U.S. 953, 83 S.Ct. 951, 9 L.Ed. 2d 977.

3. Thereupon, petitioner docketed his appeal in the Illinois Appellate Court pursuant to said transfer, and asked that the appeal be transferred back to the Illinois Supreme Court, since the only issue involved was the constitutionality of Section 48(1)(c). See, 47 Ill. App. 2d 167, at 169-170, 197 N.E.2d 739, at 741. The Illinois Appellate Court denied petitioner's motion to transfer the appeal back to the Illinois Supreme Court, but ruled that the ruling of the Superior Court of Cook County should be reversed and the case remanded. 47 Ill. App.2d 167, 197 N.E.2d 739 (1964). The Illinois Appellate Court ruled that Section 48(1)(c) did not authorize the dismissal of petitioner's state court case because of the pendency in the federal court of petitioner's Federal Civil Rights Act suit.

4. Respondents' petition for leave to appeal to the Illinois Supreme Court was granted. Thereupon, petitioner, as the appellee, argued in his Brief and oral argument in the Illinois Supreme Court that were the court to overturn the Illinois Appellate Court's ruling, and rule instead that Section 48(1)(c) did authorize the dismissal of petitioner's suit in the Superior Court because of the pendency of another suit in the Federal Court, that Section 48(1)(c), so construed, would then be repugnant to Section One, Fourteenth Amendment of the Federal Constitution. (See, petitioner's Brief, pages 4-7, 9-15).

The Illinois Supreme Court reversed the ruling of the Illinois Appellate Court and affirmed the ruling of the Superior Court of Cook County. (Appendix B, infra, pp. 17-18).

In its written Opinion, the Illinois Supreme Court, the final forum in Illinois, said, referring to Section 48(1)(c):

> "The statute here authorizes dismissal where another action is pending without distinguishing between actions depending[sic]in another jurisdiction." (Appendix A, infra, page 15).

The Illinois Supreme Court sought to give the impression that it had not passed upon the constitutionality of Section 48(1)(c) by making a recital in its written Opinion directly opposite what was contained in petitioner's Brief and oral argument. See, Certified copy of petitioner's Motion in the Illinois Supreme Court to expunge portion of their written Opinion and to withdraw Opinion; and to vacate judgment. See, certified copy of Order entered January 14, 1965, denying said Motion.

The principle of law set forth by this Court is applicable to the instant case:

"A decision of a State court applying and enforcing a State statute of general scope against a particular transaction as to which there was a distinct and timely insistence that if so applied, the statute was void under the Federal Constitution, necessarily affirms the validity of the statute as so applied * * *. The inquiry then is whether the statute is constitutional as applied and enforced in respect to the situation presented." Fiske v. State of Kansas, 274 U.S. 380, 385, 47 S.Ct. 655, 656, 71 L.Ed. 1108.

Since petitioner's suit was dismissed by the Superior Court of Cook County, at petitioner's costs, on the sole basis of the pendency in the Federal Court of another action between the same parties, petitioner certainly was damaged, under color of Section 48(1)(c), for pursuing his right to federal-court remedy supplementary to his state-court remedy.

In a recent case, this Court passed upon "the propriety of a state court's punishment of a federal court litigant for pursuing his right to federal-court remedies * * *. That right was granted by Congress and cannot be taken away by the State. The Texas courts were without power to take away this federal right by contempt proceedings or otherwise." Donovan v. City of Dallas, 377 U.S. 408, 413-414, 84 S.Ct. 1579, 1583 (1964). (Emphasis added).

The phrase "or otherwise" covers the principle involved in the instant case. Petitioner had a federal constitutional right to pursue his federal-court remedy supplementary to the state-court remedy--and he had a federal constitutional right not to be damaged in his property by the State court, under color of Section 48 (1)(c), on the sole basis of the pendency of petitioner's Federal Court Civil Rights Act suit.

This Court should grant certiorari, because the ruling of the Illinois Supreme Court contravenes and nullifies the intentions of the framers of the Civil Rights Acts of 1871[42 U.S.C.A. Sections 1983, 1985(2)(3)]and the ruling contravenes and nullifies the authoritative pronouncements of this Court.

The ruling contravenes and nullifies the Due Process, Equal Protection, and privileges and immunities clauses of Section One, Fourteenth Amendment.

The ruling is not only wrong but significantly wrong.

CONCLUSION.

For the reasons above stated it is respectfully submitted that the Petition for a writ of certiorari be granted.

Respectfully submitted,

Sherman H. Skolnick,
Petitioner, Pro Se.

APPENDIX A.

OPINION
SUPREME COURT OF ILLINOIS

UNITED STATES OF AMERICA

STATE OF ILLINOIS
SUPREME COURT } ss.

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth day of November, in the year of our Lord, one thousand nine hundred and sixty four, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Joseph E. Daily Justice Walter V. Schaefer
Justice Harry B. Hershey Justice Byron O. House
Justice Roy J. Solfisburg, Jr. Justice Robert C. Underwood
William G. Clark, Attorney General
Robert G. Miley, Marshal

Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that afterwards, to-wit, on the 24th day of November, 1964, the opinion of the court was filed in said cause and entered of record in the words and figures following, to-wit:

SHERMAN H. SKOLNICK, *Appellee*

No. 38597 vs.

CHARLES T. MARTIN; ARTHUR LILLY AND CHARLES R. PERRIGO, *Appellants*

} Appeal from Appellate Court First District

Docket No. 38597—Agenda 24—September, 1964.
Sherman H. Skolnick, Appellee, v. Charles T. Martin *et al.*, Appellants.

Mr. JUSTICE DAILY delivered the opinion of the court:

We have granted leave to appeal in this case to consider widely divergent constructions of section 48(1)(c) of our Civil Practice Act arrived at by the Appellate Court for the First District in *F & F Laboratories, Inc.* v. *Chocolate*

Spraying Co. 6 Ill. App. 2d 299, and in *Skolnick* v. *Martin*, 47 Ill. App. 2d 167, the instant case, wherein the court declined to adhere to its former decision. It is the direction of the section that a defendant in our courts may move for the dismissal of an action against him on the ground that "there is another action pending between the same parties for the same cause," (Ill. Rev. Stat. 1961, chap. 110, par. 48(1)(c),) and the precise question here is whether dismissal is authorized when the "other action" is one pending in a Federal court.

The circumstances under which the plaintiff in this case commenced an action against defendants in both the superior court of Cook County and a Federal district court, (seeking identical amounts of damage on identical facts,) are fully set forth in the opinion of the Appellate Court, as are the circumstances under which the superior court dismissed the State action on the basis of section 48(1)(c). We see no purpose in detailed repetition. However, before turning to the principal problem of statutory construction presented, it is first necessary to point out that the Appellate Court was in error when, as an alternative basis for decision, it suggested that the two actions were not "for the same cause," as the section requires. The section refers to "the same cause," not to the same "cause of action," and it has been held that actions are "for the same cause," when relief is requested on substantially the same state of facts. (*Leven* v. *Birrell*, 91 N.Y.S. 2d 729, 731; *cf. Meier* v. *Hilton*, 257 Ill. 174; *Carlin* v. *City of Chicago*, 262 Ill. 564; *James* v. *Langley*, 323 Ill. App. 268; *Marco* v. *Dulles*, (D.C.N.Y.) 177 F. Supp. 533, 549-550.) Measured by this test, the two actions here were "for the same cause." And in any case, we have held that identity of cause of action depends upon identity of transaction or occurrence. *Geneva Construction Co.* v. *Martin Transportation Co.* 4 Ill. 2d 273, 288.

Historical background shows that, prior to the enactment of the Civil Practice Act, it was the general rule that where a party began two actions for the same cause within the same jurisdiction, the pendency of the first was ground

for the abatement of the second, the reason being that one should not be vexed with a litigation in more than one action at the same time. (*Gage* v. *City of Chicago*, 216 Ill. 107; *Branigan* v. *Rose*, 3 Gilm. 123; 1 I.L.P., Abatement, sec. 21.) However, it was likewise held that the general rule did not apply to actions brought in different jurisdictions for the same cause, and thus that it was no ground for the abatement of a proceeding in an Illinois court merely because another action was pending in a court of the United States or a sister State. (*Illinois Life Insurance Co.* v. *Prentiss*, 277 Ill. 383; *Greer* v. *Young*, 120 Ill. 184; 1 I.L.P., Abatement, sec. 31.) For reasons later apparent, it should be noted that New York followed the same general rule and made the same exception. (*Oneida County Bank* v. *Bonney*, 101 N.Y. 173, 4 N.E. 332.) This was the state of the law when the first antecedent of section 48(1)(c) of the present Civil Practice Act was enacted to provide that a defendant may move for dismissal of an action or suit on the ground that "there is another action pending between the same parties for the same cause." (Smith-Hurd Stat. 1933, chap. 110, par. 172.) And, in reality, the issue here is what was intended by section 48(1)(c) insofar as actions pending in a Federal court are concerned.

Judicial interpretation of section 48(1)(c) in the setting of this case was first made in the *F & F Laboratories* case, (6 Ill. App. 2d 299,) where it was construed as authorizing the dismissal of a State action where there was a suit involving the same parties and the same subject matter pending in a Federal court. The *ratio decidendi* was that the plain and unambiguous language of the statute permitted no other construction. Nine years later, in the instant case, the same court reached an exactly contrary result, (47 Ill. App. 2d 167,) and decided that the section of the Civil Practice Act involved had done nothing more than to allow the matter of abatement to be raised by a motion to dismiss rather than by plea. It was pointed out, first, that section 48(1)(c) of our act had been patterned after a similar provision in the New York Rules of Civil Practice, (see: Smith-Hurd Anno. Stat., chap. 110, sec. 48, Historical and Practice Notes, p. 690,) second, that the New York rule has

been construed as applying only to other actions pending in the courts of New York, third, that it was the prevailing rule in the United States that a case in a State court may not be dismissed by virtue of another action pending in a Federal court, and on these bases it was reasoned there had been no legislative intent to change the law as it had prevailed prior to the enactment of section 48(1)(c). The arguments of the respective parties in this court follow the lines of these conflicting decisions.

When we consider the purpose for which the Civil Practice Act was enacted, and look to the simple and unambiguous language by which the legislature expressed itself, it is our opinion that the section was intended to grant a right to dismiss irrespective of the jurisdiction in which the other action was pending. The legislature has apparently agreed with the interpretation adopted in the *F & F Laboratories* case, for it has not amended section 48(1)(c).

The statute here authorizes dismissal where another action is pending without distinguishing between actions depending in another jurisdiction. Had it been intended to restrict the authority to dismiss to situations where the other cause of action was pending in our own jurisdiction, it would have been a simple matter to do so. Furthermore, the Civil Practice Act was designed to eliminate the formalized rules of common-law pleading and to provide a procedure whereby substantive rights could be determined with a minimum of delay, technicality and expense. (*Scott v. Freeport Motor Casualty Co.* 392 Ill. 332.) Indeed, it is the express direction of section 4 that the act shall be liberally construed to the end that controversies may be speedily and finally determined. (Ill. Rev. Stat. 1961, chap. 110, par. 4.) Certainly the elimination of repetitious suits and the relief of courts and litigants alike from the unnecessary burden of trying the same issues pending in another action are consistent with the purpose and spirit of the Civil Practice Act, and it can hardly be said that actions for the same cause filed in the Federal courts or those of our sister States are less repetitious or burdensome than those filed within our own jurisdiction.

Citing abstract quotations from Federal decisions having little or no application to the circumstances of this case, plaintiff asserts that to construe section 48(1)(c) as applying when the other action is one pending in a Federal court will cause it to contravene various provisions of the constitution, including the guarantees of due process and equal protection of the laws. We are not advised, however, of the manner in which the constitutional provisions are violated. Certainly neither due process nor equal protection requires a right to entertain more than one action for the same cause, and just as certainly our statute does not interfere with or take away plaintiff's right to pursue his action in a Federal court. Consistent with our ruling when plaintiff sought to appeal directly to this court, it is our conclusion that the brief and argument presented are insufficient to raise substantial or debatable constitutional questions. *Cf. People ex rel. Carter* v. *Touchette*, 5 Ill.2d 303; *People* v. *Davies*, 354 Ill. 168.

Accordingly, and for the reasons stated, the judgment of the Appellate Court for the First District is reversed, and the order of the superior court, dismissing plaintiff's suit, is affirmed.

Appellate Court reversed;
superior court affirmed.

I, Mrs. Earle Benjamin Searcy, Clerk of the Supreme Court of the State of Illinois, and keeper of the records, files, and Seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said Supreme Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the Seal of the Said Supreme Court in Springfield, in said State, this 5th day of April, A.D. 1965.

Mrs. Earle Benjamin Searcy, Clerk,
Supreme Court of the State of Illinois.

APPENDIX B.

UNITED STATES OF AMERICA

STATE OF ILLINOIS } ss.
SUPREME COURT }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the ninth of November, in the year of our Lord, one thousand nine hundred and sixty-four, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Joseph E. Daily Justice Walter V. Schaefer
Justice Harry B. Hershey Justice Byron O. House
Justice Roy J. Solfisburg, Jr. Justice Robert C. Underwood
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 24th day of November, A.D. 1964, the same being one of the day of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

SHERMAN H. SKOLNICK, *Appellee*

No. 38597 vs.

CHARLES T. MARTIN; ARTHUR LILLY AND CHARLES R. PERRIGO, *Appellants*

Appeal from Appellate Court First District 62 S 204 49148

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and inspected as well the record and proceedings of the Appellate Court, First District, as the matters and things therein assigned for error, and now, being sufficiently advised of and concerninging the premises, are of the opinion that in the record and proceedings aforesaid, and in the rendition of the judgment of the Appellate Court, First District, there is manifest error.

THE REFORE, it is considered by the Court, that

for that error and others in the record and proceedings aforesaid the judgment of the Appellate Court, First District, in this behalf rendered, BE REVERSED, ANNULLED, SET ASIDE AND WHOLLY FOR NOTHING ESTEEMED.

And the Court having diligently examined and inspected as well the record and proceedings of the Superior Court of Cook County as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the renditionof the order of the Superior Court of Cook County, dismissing plaintiff's suit, is there anything erroneous, vicious or defective, and in that record there is no error.

THEREFORE, it is considered by the Court that the order of the Superior Court of Cook County, dismissing plaintiff's suit, aforesaid, BE AFFIRMED IN ALL THINGS AND STAND IN FULL FORCE AND EFFECT, notwithstanding the said matters and things therein assigned for error.

And it is further considered by the Court that the said appellants recover of and from the said appellee costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, MRS. EARLE BENJAMIN SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the Seal of said Court, this 5th day of April, A.D. 1965.

Mrs. Earle Benjamin Searcy, Clerk,
Supreme Court of the State of Illinois.

APPENDIX C.

UNITED STATES OF AMERICA

STATE OF ILLINOIS } ss.
SUPREME COURT }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the eleventh day of January, in the year of our Lord, one thousand nine hundred and sixty-five, within and for the State of Illinois.

Present: Ray I. Klingbiel, Chief Justice
Justice Joseph E. Daily — Justice Walter V. Schaefer
Justice Harry B. Hershey — Justice Byron O. House
Justice Roy J. Solfisburg, Jr. — Justice Robert C. Underwood
William G. Clark, Attorney General
Robert G. Miley, Marshal
Attest: Mrs. Earle Benjamin Searcy, Clerk

BE IT REMEMBERED, that, to-wit: on the 19th day of January, A.D. 1965, the same being one of the days of the term of the Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

SHERMAN H. SKOLNICK, *Appellee* vs. CHARLES T. MARTIN; ARTHUR LILLY AND CHARLES R. PERRIGO, *Appellants*	Appeal from Appellate Court First District 62 S 204 49148

No. 38597

And now, on this day, the Court having duly considered the petition for rehearing filed herein, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies a rehearing in this cause.

I, MRS. EARLE BENJAMIN SEARCY, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that

the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Court this 5th day of April, A.D. 1965.

Mrs. Earle Benjamin Searcy, Clerk,
Supreme Court of the State of Illinois.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1069

SHERMAN H. SKOLNICK,

Petitioner,

vs.

CHARLES T. MARTIN; and ARTHUR LILLY, and CHARLES R. PERRIGO,

Respondents.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

WALTER T. FISHER,
CHARLES T. MARTIN,
J. WILLIAM HAYTON,
BELL, BOYD, LLOYD, HADDAD & BURNS,
135 South La Salle Street,
Chicago 3, Illinois,
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Attorneys for Respondent.
Charles T. Martin.

THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964.

No. 1069.

SHERMAN H. SKOLNICK,

Petitioner,

vs.

CHARLES T. MARTIN; and ARTHUR LILLY, and CHARLES R. PERRIGO,

Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

STATEMENT.

On January 4, 1962, petitioner filed two duplicate law suits against the same defendants making the same allegations. One was filed in the Superior Court of Cook County in Chicago, and the other in the Federal District Court in Chicago.

The Superior Court on March 28, 1962, granted defendant's motion for a nonsuit pursuant to § 48 (1)(c) of the Illinois Civil Practice Act (Ill. Rev. Stat. 1963 Ch. 110 § 48 (1) (c)) which provides for a nonsuit on the ground:

> "(c) That there is another action pending between the same parties for the same cause." (Abst. 16.)

Petitioner appealed this order to the Illinois Supreme Court which transferred the appeal to the Illinois Appellate Court. Petitioner sought review of this order by filing a petition for certiorari, Oct. Term, 1962, No. 807 which was denied, 372 U. S. 953. Thereafter, the Illinois Appellate Court construed § 48 (1)(c) of the Illinois Civil Practice Act as authorizing a nonsuit only where the duplicate case was also pending in an Illinois state court and as not authorizing a nonsuit where the other action was pending in a federal court. *Skolnick* v. *Martin*, 47 Ill. App. 2d 167; 197 N. E. 2d 739.

Thereafter, the Illinois Supreme Court reversed the Appellate Court and affirmed the nonsuit entered by the Superior Court on March 28, 1962, on the ground that § 48 (1)(c) applied where the duplicate case was pending in the federal court. *Skolnick* v. *Martin*, 32 Ill. 2d 55; 203 N. E. 2d 428. Petitioner prays for a Writ of Certiorari to review this judgment affirming the nonsuit.

(Petitioner's duplicate action in the Federal District Court in Chicago was dismissed for failure to state a claim upon which relief could be granted. This dismissal was affirmed. *Skolnick* v. *Martin*, 317 F. 2d 855, and certiorari was denied, 375 U. S. 908, rehearing denied, 375 U. S. 960.)

ARGUMENT.

The petition is based on the theory that the entry of a nonsuit by the Illinois court (pursuant to Ch. 110, § 48 (1)(c)) because of another action pending in the United States District Court between the same parties for the same cause violates the Fourteenth Amendment of the United States Constitution. Petitioner cites no authority supporting his theory. We have found no case where such a fantastic claim was even made. Certainly it is not a violation of the Fourteenth Amendment for the Illinois legislature to determine that as a matter of public policy defendants should not be harassed by identical suits by the same plaintiff and that the dockets of the Illinois courts should not be crowded with such suits.

Further, if a plaintiff is nonsuited pursuant to § 48 (1)(c), the plaintiff has one year from the date of the nonsuit to refile his action. (Ill. Rev. Stat. 1963, Ch. 83 § 24(a).)

Further, in the case at bar the petitioner could have refiled his case in an Illinois state court pursuant to Ch. 83 § 24(a) within one year after the dismissal of his case in the federal court. *Roth v. Northern Assurance Company*, 32 Ill. 2d 40, 203 N. E. 2d 415. The Illinois practice respecting nonsuits raises no constitutional questions.

CONCLUSION.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

WALTER T. FISHER,
CHARLES T. MARTIN,
J. WILLIAM HAYTON,
BELL, BOYD, LLOYD, HADDAD & BURNS,
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SHERMAN H. SKOLNICK,

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CHARLES T. MARTIN; and ARTHUR LILLY, and CHARLES R. PERRIGO,

Respondents.

BRIEF FOR RESPONDENTS ARTHUR LILLY AND CHARLES R. PERRIGO IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

FRANK GLAZER
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STate 2-7189
Attorney for Respondents,
Arthur Lilly and Charles R. Perrigo.

The Scheffer Press, Inc.—ANdover 3-6850

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964.

No. 1069

SHERMAN H. SKOLNICK,

Petitioner,

vs.

CHARLES T. MARTIN; and ARTHUR LILLY, and CHARLES R. PERRIGO,

Respondents.

BRIEF FOR RESPONDENTS ARTHUR LILLY AND CHARLES R. PERRIGO IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

ARGUMENT.

The petitioner filed two law suits on the same date, one in the U.S. District Court for the Northern District of Illinois, Eastern Division and one in the Superior Court of Cook County, Illinois. The Complaints were identical as to identity and alignment of parties and contained identical charges of alleged wrongdoing. The state court case was dismissed in the trial court and said dismissal affirmed by the Supreme Court of Illinois, pursuant to a State Statute that permits a dismissal of a state case where another action is pending for the same cause between the same parties.

The Supreme Court of Illinois in its opinion interpreted the language of its Statute and found that the causes filed by this petitioner were identical and determined that plaintiff is entitled to his day only in one Court at a time. The Illinois Court also stated that petitioner's "brief and argument presented are insufficient to raise substantial or debatable constitutional questions."

CONCLUSION.

Since no constitutional question was involved, merely a question of an interpretation of a Statute prohibiting multiplicity of suits, the petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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STate 2-7189